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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/068,121	02/05/2002	Kevin M. Biggie	00045-00530	5714

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EXAMINER

WOOD, KIMBERLY T

ART UNIT	PAPER NUMBER
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3632

DATE MAILED: 11/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/068,121

Applicant(s)

BIGGIE ET AL.

Examiner

Kimberly T. Wood

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 September 2004.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-53 is/are pending in the application.
- 4a) Of the above claim(s) 2-5, 11, 13-15, 19-26, 29-50 and 52 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 6-10, 12, 16-18, 27, 28, 51 and 53 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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~~This is an office action for serial number 10/068,121,~~

Election/Restrictions

This application contains claims 2-5, 11, 13, 15, 19-26, 29-50, and 52 drawn to an invention nonelected with traverse in Paper Dated April 12, 2004. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 6, 12, 16, 27, 28, 51 and 53 are rejected under 35 U.S.C. 102(b) as being anticipated by Boss 3,484,810. Boss discloses a plurality of standardized members/frame members (21A and 21B and 32 and 31) having a plurality of connection receivers (26, 28B, 28A, and where 34A and 34B are received in members 21A, 21B and 31, 32,), a plurality of first connectors/a plurality of first means for securing standardized members (29A, 29B, 34A, and 34B), a plurality of supports (27)/at least two

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~~second means for supporting at least one elongate supported item~~
comprising a strap having a receiving portion (where 36 is received on support) and a pair of legs (27B and the vertical portion between 27B and the horizontal portion that is received in 26), and at least one second connector/at least one third means for securing said at least one second means to one of said standardized members (the ends of 27 that are received within 26), supported item (36). Boss inherently teaches the method of supporting a supported item comprising the steps of selecting a plurality of frame members, forming into a grid shape, connecting together the frame members, engaging connection members.

Claims 1, 6, 7, 9, 12, 16-18 are rejected under 35 U.S.C. 102 (b) as being anticipated by Kamrud, Sr. (Kamrud) 4,676,472. Kamrud discloses a plurality of standardized members (28 and 30) of tubular cross-sectional shape (column 3, lines 31ff) each having a plurality of connection receivers (36, 34) so as to form a frame (by definition frame in Merriam Webster's Collegiate Dictionary means "something composed of parts fitted together and united"), a plurality of first connectors (40 and the washers in exploded view), a plurality of supports (16 and 14) comprising a strap 22 having a receiving portion (where high voltage tubing is received) and a pair of legs (44 or 24 and

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~~26), one-supported item (figure 3, high-voltage tubing~~
conductors or buses), at least one second connector (46)
includes a threaded rod. The applicant is reminded that the
supported item has not been positively claimed by the applicant
therefore the support system need only be capable of performing
the function of supporting the at least one supported item being
a electrical conductor or a fluid conductor.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which
forms the basis for all obviousness rejections set forth in this
Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 8 and 10 are rejected under 35 U.S.C. 103(a) as
being unpatentable over Boss 3,484,810. Boss discloses all of
the limitations of the claimed invention except for the
cellulose pressboard or made by folding a sheet containing a
plurality of grooves. It would have been an a matter of
engineering design choice to one having ordinary skill in the
art at the time of the invention to have modified Boss to have

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~~made the standardized members of cellulose pressboard or made by~~
folding a sheet containing a plurality of grooves since it has
been held to be within the general skill of a worker in the art
to select a known material on the basis of its suitability for
the intended use as a matter of obvious design choice. In re
Leshin, 125 USPQ 416. The applicant does not indicate within
the specification that the type of material or how the
standardized members are formed as being critical to the
invention. (See applicant's specification page 14, lines 3ff
and page 13, lines 1ff).

Response to Arguments

Applicant's arguments filed September 17, 2004 have been
fully considered but they are not persuasive.

In response to the applicant's arguments that Boss does not
disclose "a plurality of standardized, **like** members", the
examiner respectfully disagrees. First, one must define the
limitation "like" in the broadest sense. The term "like" means
"resembling or characteristic of" as defined by "Merriam
Webster's Collegiate Dictionary Tenth Edition. The applicant has
interpreted the term "like" as being "same" which is not the
definition of the limitation. The examiner interpreting the
limitation in the broadest sense believes that the "X bracing

~~members" and "upright standard" (21A and 21B and 32 and 31) are~~

"like members" since they have characteristics of one another.

The common characteristics between the "plurality of standardized, like members" (21A and 21B and 32 and 31, Boss) consists of each member being a bar, made of metal, having a plurality of openings, and being structural members forming a frame. Therefore, examiner asserts that the Boss patent clearly anticipates the limitations of claims.

In response to the applicant's arguments that Kamrud, Sr. does not disclose a plurality of first connectors, the examiner respectfully disagrees. The applicant claims "a plurality of first connectors" which by definition means "to join or fasten together by something intervening" as defined by Merriam Webster's Collegiate Dictionary Tenth Edition. Kamrud, Sr. clearly meets this limitation since the bolt (40) and the washers and nut (exploded view figure 1) are all used in conjunction with each other as connectors for the purpose of joining the standardized member (30 and 28) together. Therefore, the examiner asserts that Kamrud, Sr. clearly anticipates the limitations of claims.

In response to the applicant's arguments that Kamrud, Sr. does not disclose "a plurality of standardized, **like** members", the examiner respectfully disagrees. First, one must define the

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~~limitation "like" in the broadest sense. The term "like" means~~
"resembling or characteristic of" as defined by "Merriam
Webster's Collegiate Dictionary Tenth Edition. The applicant has
interpreted the term "like" as being "same" which is not the
definition of the limitation. The examiner interpreting the
limitation in the broadest sense believes that the members (28
and 30) are "like members" since they have common
characteristics of one another. The common characteristics,
between the "plurality of standardized, like members" (28 and
30), consists of each member being a bar, made of fiberglass,
having a plurality of openings, and being structural members
forming a frame. Therefore, examiner asserts that the Boss
patent clearly anticipates the limitations of claims.

In response to applicant's argument that the examiner's
conclusion of obviousness is based upon improper hindsight
reasoning, it must be recognized that any judgment on
obviousness is in a sense necessarily a reconstruction based
upon hindsight reasoning. But so long as it takes into account
only knowledge which was within the level of ordinary skill at
the time the claimed invention was made, and does not include
knowledge gleaned only from the applicant's disclosure, such a
reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392,
170 USPQ 209 (CCPA 1971). The applicant argues that the

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~~modification of the members of Boss to press board is hindsight.~~

The requirements/function for Boss as stated in column 1, lines 66ff "display stand which is economical, sturdy, and versatile" would not be destroyed if the stand were made of pressboard.

The applicant has not disclosed within the specification how pressboard is critical to the make up of the invention therefore the examiner has viewed the limitation as merely a design choice.

Conclusion


THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier
communications from the examiner should be directed to Kimberly
T. Wood whose telephone number is 703-308-0539. The examiner
can normally be reached on Monday-Thursday 7:30am to 5:00pm.

If attempts to reach the examiner by telephone are
unsuccessful, the examiner's supervisor, Leslie Braun can be
reached on 703-308-2156. The fax phone number for the
organization where this application or proceeding is assigned is
703-872-9306.

Information regarding the status of an application may be
obtained from the Patent Application Information Retrieval
(PAIR) system. Status information for published applications
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see <http://pair-direct.uspto.gov>. Should you have questions on
access to the Private PAIR system, contact the Electronic
Business Center (EBC) at 866-217-9197 (toll-free).


Kimberly T. Wood
Primary Examiner
Art Unit 3632

November 24, 2004